



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allstate Products Co.--Request for Reconsideration
File: B-230150.4
Date: April 28, 1988

DIGEST

An agency has an obligation to fully consider the allegations of an agency-level protest and the impending expiration fiscal year funds does not require the agency to circumvent its normal administrative procedures for resolving the protest.

DECISION

Allstate Products Co. requests that we reconsider our decision in Allstate Products Co., B-230150, Mar. 11, 1988, 88-1 CPD ¶ , in which we dismissed its protest against the cancellation of invitation for bids (IFB) No. DACA45-87-B-0139, issued by the United States Army Corps of Engineers for the replacement of windows at Fort Carson, Colorado. Allstate contended that the cancellation after bids were opened and exposed was inappropriate when the award under the solicitation would have served the actual needs of the government. We dismissed the protest because no fiscal year (FY) 1988 funds were available for the project due to budget cuts.

The Army issued the IFB on August 11, 1987. Fifteen bids were received at bid opening on September 16, 1987, with Allstate's bid being the lowest received. On September 18, the fourth lowest bidder, Palmer Glass Company, filed an agency-level protest over the award of the contract to any of the three lower bidders. Due to the protest, the Army delayed award of the contract. As of September 30, 1987, the close of FY 1987, a decision on the protest had not been made and the contract had not been awarded. As a result, the FY 1987 funds that were available for obligation on the contract expired.

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In our decision, we stated the general rule that if the agency has a cogent and compelling reason to do so, cancellation is proper, and that lack of appropriated funds is such a reason. See Textronix, Inc., B-219981.4, June 12, 1986, 86-1 CPD 545. We therefore concluded that since no funds were available from the current appropriation, the Army had no choice but to cancel the IFB. See Kora & Williams Corp., B-224987, Feb. 27, 1987, 87-1 CPD ¶ 228.

Allstate now argues, among other things, that we ignored the second alternate basis of its protest. Specifically, Allstate complains that our decision did not address its contention that the agency was arbitrary and capricious in not acting more expeditiously in deciding Palmer's bid protest. Allstate argues that the Army should have summarily dismissed the protest as frivolous, thereby clearing the way for the contract to be awarded during FY 1987 when funds were available.

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of a decision is deemed warranted and must specify any errors of law made in the decision or information not previously considered. 4 C.F.R. § 21.12(a) (1988). Information not previously considered refers to information which was overlooked by our Office or information to which the protester did not have access when the initial protest was pending. DALFI, Inc.--Reconsideration, B-224248.2, Feb. 19, 1987, 87-1 CPD ¶ 186.

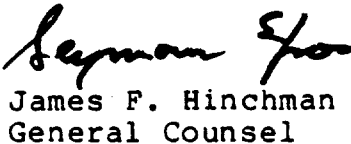
We considered Allstate's contention that the Army allowed FY 1987 funds to expire so that the funds could be used for other purposes, along with its complaint concerning the Army's failure to act on the protest prior to the expiration of FY 1987 funds. While Allstate characterized these actions as "arbitrary and capricious," we found the delayed award for administrative reasons, such as the pendency of an agency-level protest, to be proper. We saw no improprieties in the Army's handling of the protest in which Palmer claims that Allstate failed to properly acknowledge the five amendments to the IFB. In its request for reconsideration, Allstate has provided no additional information which would lead us to conclude that the Army's action was arbitrary and capricious.

The record shows that Palmer's protest was filed in late September 1987, and the Army's district office on October 8, referred the matter to the Army's Chief of Engineers with a recommendation that the protest be denied. On November 9, that office denied Palmer's protest. While Allstate argues that Palmer's protest was frivolous and should have been

summarily dismissed, there is no evidence in the record whatsoever to support Allstate's further allegation that the delay in resolving the protest was due to a "conscious and deliberate attempt not to award a contract" to Allstate. In fact, the record indicates that the agency believed that FY 1988 funds would be available for the project.

In short, the agency had an obligation to fully consider the allegations of the protest, and its administrative proceeding does not suggest to us that the time to resolve the protest was unreasonable. The impending expiration of fiscal year funds does not require an agency to circumvent its normal administrative procedures for resolving an agency-level protest, and the time necessary to do so is plainly not evidence of either a "conscious and deliberate attempt not to award a contract" to the protester or of arbitrary and capricious action by the agency.

The request for reconsideration is denied.



James F. Hinchman
General Counsel